

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

IN RE:	§
	§ CASE NO. 10-60149
LACK'S STORES, INCORPORATED,	§
ET AL.,¹	§ (Chapter 11)
	§ (Jointly Administered)
DEBTORS.	§

**NOTICE OF SALE PROCEDURES, AUCTION DATE, AND HEARING
(REAL PROPERTY LEASE)**

On January 13, 2011, the Court entered its *Order Approving Procedures and Bid Protections for the Sales and Assignments of Real Property Leases Free and Clear of Liens, Claims, Encumbrances, and Other Interests (Real Property Leases)* [Docket No. 364] (the "Sale Procedures Order") in which it approved, among other things, a procedure for the sale and assignment of certain unexpired leases of non-residential real property in which Lack's Stores, Incorporated ("Lack's") has an interest.

Lack's and BMF Texas GP Holdings LLC have executed that certain Assignment Agreement dated January 17, 2011 (the "Assignment Agreement") relating to the unexpired lease of non-residential real property located at **2004 East 42nd Street, Odessa, TX 79762** (the "Real Property Lease"). A copy of the Assignment Agreement is available free of charge at www.kccllc.net/lacks. Lack Properties, Lack's Stores, Incorporated, Merchandise Acceptance Corporation, and Lack's Furniture Centers, Inc. (collectively, the "Debtors") will seek Court approval of the Assignment Agreement subject to higher or better offers as more particularly set forth in the Sale Procedures which are attached hereto as **Exhibit A** pursuant to, among other provisions, Bankruptcy Code §§ 363 and 365. The Debtors propose that the sale and assignment be free and clear of all liens, claims, encumbrances, and other interests with any holder's lien, claim, encumbrance, or other interest attaching to the proceeds of the sale, with the same nature, validity, and priority of that interest prior to the proposed sale. The Real Property Lease will be sold on such other terms set forth in the *Debtors' Expedited Motion to Approve Procedures and Bid Protections for the Sales and Assignments of Real Property Leases Free and Clear of Liens, Claims, Encumbrances, and Other Interests (Real Property Leases)* [Docket No. 233].

According to the Debtors' books and records, the amount necessary to cure all defaults under the Real Property Lease subject to this Notice is \$0.

The following dates and deadlines apply to the sale of the Real Property Lease as contemplated under the Assignment Agreement and the Sale Procedures:

- Bid Deadline: January 21, 2011 at 5:00 p.m., Central Time

¹ The Debtors and the last four digits of their tax identification numbers are Lack's Stores, Incorporated (6528), Merchandise Acceptance Corporation (0972), Lack's Furniture Centers, Inc. (9468), and Lack Properties, Inc. (8961).

- Objection Deadline: January 24, 2011 at 5:00 p.m., Central Time
- Auction Date: January 26, 2011, 1:30 p.m., Central Time, at the United States Courthouse, Courtroom of the Honorable Jeff Bohm, 515 Rusk Avenue, Houston, Texas, 77002
- Hearing Date: January 26, 2011, 1:30 p.m., Central Time, at the United States Courthouse, Courtroom of the Honorable Jeff Bohm, 515 Rusk Avenue, Houston, Texas, 77002

If you oppose the sale and assignment of the Real Property Lease, the cure payment to be made on account of such Real Property Lease, or the providing of adequate assurance of future performance under the Real Property Lease, you must timely file and serve an objection. You should read the *Debtors' Expedited Motion to Approve Procedures and Bid Protections for the Sales and Assignments of Real Property Leases Free and Clear of Liens, Claims, Encumbrances, and Other Interests (Real Property Leases)* [Docket No. 233], the Sale Procedures Order, the Sale Procedures, and this Notice carefully as your rights may be affected.

All requests for information concerning the Real Property Lease should be directed in writing to DJM Realty Services, LLC, Attn: Jim Avallone, 445 Broadhollow Road, Suite 225, Melville, New York, 11747, (o) 631.927.0024, (f) 631.752.1231, javallone@djmrealty.com.

Dated: January 18, 2011

Respectfully submitted,

VINSON & ELKINS LLP

By: /s/ Michaela C. Crocker

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ATTORNEYS FOR THE DEBTORS

EXHIBIT A**SALE PROCEDURES FOR REAL PROPERTY LEASES****A. Real Property Leases to be Sold**

The property to be sold consists of the unexpired lease of non-residential real property for the leased premises located at **2004 East 42nd Street, Odessa, TX 79762** and any other assets (the “Real Property Leases”) as more particularly set forth in that certain Assignment Agreement dated January 17, 2011 (the “Assignment Agreement”) by and between Lack’s Stores, Incorporated (“Lack’s”) and BMF Texas GP Holdings LLC (the “Proposed Purchaser”). The Proposed Purchaser has agreed to purchase and take an assignment of the Real Property Leases for, among other things, assumption of liabilities at closing plus other consideration, all of which is subject to these Sale Procedures. The Real Property Leases will be sold free and clear of all liens, claims, encumbrances, and other interests and on such other terms set forth in the *Debtors’ Expedited Motion to Approve Procedures and Bid Protections for the Sales and Assignments of Real Property Leases Free and Clear of Liens, Claims, Encumbrances, and Other Interests (Real Property Leases)* [Docket No. 233].

B. Selection of Qualified Bidders

Of the parties willing to submit a bid subject to the minimum overbid requirement set forth below (each a “Potential Purchaser”), the Debtors will select the parties who possess the necessary qualifications to bid. In order to qualify as a Potential Purchaser, a bidder must demonstrate its willingness to bid in accordance with these Sale Procedures. The Debtors may require any Potential Purchaser to execute a confidentiality agreement in form and substance satisfactory to the Debtors.

To be a “Qualified Bid,” it must be a bid:

- a. that is an all cash bid that consists of an executed version of the Assignment Agreement acceptable to the Debtors (with any alterations clearly marked) except for the purchase price, which is subject to the overbid requirement set forth below (the “Bidder Agreement”);
- b. that expressly states that such bid is irrevocable until the earlier to occur of (i) the Closing (as defined herein), and (ii) forty-five days following the Auction;
- c. the cash amount of which (with respect to the initial round of bidding) is not less than \$5,000 in excess of the consideration payable by the Proposed Purchaser under the Assignment Agreement, and with respect to each subsequent round of bidding at the Auction is in excess of the aggregate consideration contained in the highest standing Qualified Bid by an amount determined to be appropriate by the Debtors prior to, at, or during the Auction (as defined below);
- d. that is accompanied by reasonably satisfactory evidence of committed financing or other ability to perform the transaction;

- e. that (i) provides sufficient indicia that such potential bidder or its representative is legally empowered, by power of attorney or otherwise, and financially capable to (A) bid on behalf of such bidder; and (B) complete and sign, on behalf of such bidder, a binding and enforceable Assignment Agreement; and (ii) does not contain any contingencies as to the validity, effectiveness, and/or binding nature of the offer including, without limitation, contingencies for financing, due diligence, or inspection, and is irrevocable;
- f. that is accompanied by a an earnest money deposit equal to the greater of (i) \$5,000 and (ii) 10% of the cash portion of the bid (the “Earnest Money Deposit”) in the form of a certified check or wire transfer to Lack Properties in care of Debtors’ counsel, with such Earnest Money Deposit being refundable upon the earlier of (i) the Closing (as set forth below), and (ii) forty-five days following the Auction if the bid is not approved by the Bankruptcy Court as the highest bid; and
- g. that meets all other requirements of the Sale Procedures.

Solely in the case of a landlord bidding on a Real Property Lease(s) to which such landlord is a party, to be a Qualified Bid, it must be a bid:

- a. that is a written offer on landlord’s corporate letterhead, or, if on behalf of landlord by landlord’s legal counsel, then on landlord’s legal counsel’s letterhead, for the purchase of one or more of the Real Property Leases (the “Landlord Bidder Agreement”);
- b. that (i) includes the gross amount offered for each individual Real Property Lease (if more than one lease), including a breakdown identifying that portion which is payable in cash to the Debtor and that portion, if any, which is “credit bid” (representing total outstanding documented and verifiable prepetition rental arrears); (ii) expressly states that the landlord’s offer is irrevocable until the earlier to occur of (A) the Closing (as defined herein), and (B) forty-five days following the Auction; (iii) states that if such landlord is the Successful Bidder (defined below), landlord is ready, willing, and able to execute a reasonable short form of lease termination agreement(s); and (iv) states that landlord agrees to waive and release any and all claims it may have against the Debtors, including claims pursuant to section 502(b)(6) of the Bankruptcy Code.
- c. that is accompanied by reasonably satisfactory evidence of committed financing, if applicable, or other ability to perform the transaction;
- d. that (i) provides sufficient indicia that such potential bidder or its representative is legally empowered, by power of attorney or otherwise, and financially capable to (A) bid on behalf of such bidder; and (B) complete and sign, on behalf of such bidder, a binding and enforceable Assignment Agreement; and (ii) does not contain any contingencies as to the validity, effectiveness, and/or binding nature of the offer including, without limitation, contingencies for financing, due diligence, or inspection, and is irrevocable; and

- e. that meets all other requirements of the Sale Procedures.

In order for a Potential Purchaser to qualify as a “Qualified Bidder” and be permitted to bid on the Real Property Leases, in the Debtors’ sole discretion, such Potential Purchaser:

- a. must have been deemed “financially qualified” by the Debtors which at a minimum will require any such Potential Purchaser to (i) provide documentation establishing that such person has sufficient cash on hand or a binding financial commitment from an established and financially sound financial institution to ensure such Potential Purchaser’s ability to meet its commitment pursuant to its bid, provide adequate assurance of future performance, and close the transaction within the time frame established; and (ii) demonstrate to the Debtors’ satisfaction that it has the legal capacity to complete the sale it is proposing and to satisfy the conditions under the Bidder Agreement or Landlord Bidder Agreement, as applicable;
- b. must have delivered to the Debtors a Qualified Bid; and
- c. must meet all other requirements of the Sale Procedures.

No Potential Purchaser will be a Qualified Bidder and have its bid considered by the Debtors unless such person has met the above requirements. The Debtors will promptly notify any Potential Purchaser who is selected as a Qualified Bidder of such selection.

C. The Assignment Agreement and Due Diligence

The Debtors will send to each Potential Purchaser a copy of the Assignment Agreement. The Debtors will provide reasonable cooperation with respect to requested due diligence. The Debtors are not required to provide confidential or proprietary information to a competitor if the competitor has not executed a confidentiality agreement or the Debtors reasonably believes that such disclosure would be detrimental to the interests and operations of Lack’s or any of the other Debtors.

D. Submission of Bids

Any Potential Purchaser desiring to submit a Qualified Bid for the Real Property Leases (a “Bid”) and to participate in an auction must deliver its Bid in writing to Vinson & Elkins LLP, Attn: Paul E. Heath, 2001 Ross Avenue, Suite 3700, Dallas, Texas, 75201, (f) 214.999.7976, pheath@velaw.com and DJM Realty Services, LLC, Attn: Jim Avallone, 445 Broadhollow Road, Suite 225, Melville, New York, 11747, (f) 631.927.0024, javallone@djmrealty.com, such that the Bid is actually received not later than January 21, 2011 at 5:00 p.m., prevailing Central Time. The Debtors will promptly provide copies of those Bids to the Official Committee of Unsecured Creditors (the “Committee”) (provided that the Committee executes a confidentiality agreement in form and substance reasonably acceptable to the Debtors) and to The CIT Group / Business Credit, Inc., as agent (in such capacity, the “Agent”).

No Bid received at or prior to the auction will under any circumstances, (i) be deemed to be a higher and better cash bid than the cash bid of the Proposed Purchaser or (ii) be accepted by the Debtors, unless, among other things, such Bid would, if accepted by the Debtors, result in the

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Debtors receiving aggregate cash consideration for the Real Property Leases of not less than an amount determined to be appropriate by the Debtors prior to, at, or during the Auction.

E. The Auction and Selection of the Successful Bid

The auction will be conducted at the United States Courthouse, Courtroom of the Honorable Jeff Bohm, 515 Rusk Avenue, Houston, Texas, 77002 or at another location as may be timely disclosed by the Debtors to Qualified Bidders, and will commence on January 26, 2011, at 1:30 p.m., prevailing Central time (the "Auction"). All Qualified Bidders must appear in person at the Auction, or through a duly authorized representative. The Debtors will consider Qualified Bids at the Auction in a single bid from a single bidder (or from two or more persons acting together pursuant to a non-collusive Agreement between them). If multiple Qualified Bids satisfying all Auction requirements are received, each party will have the right to continue to improve its bid at the Auction. Bidding increments for the Real Property Leases at the Auction will be in aggregate minimum monetary increments of \$5,000 or such other amount determined to be appropriate by the Debtors prior to, at, or during the Auction.

The Auction will conclude as determined by the Debtors, in consultation with the Committee and the Agent, after consideration of the bids received. At the conclusion of the Auction, and subject to Court approval following the Auction, the successful bid will be selected by the Debtors (the "Successful Bid").

Within six hours after the conclusion of the Auction or such later time as may be agreed to by the Debtors after consultation with the Committee and the Agent, the entity that made the highest or best Qualified Bid or the entities that together (non-collusively) made the highest or best Qualified Bid (the "Successful Bidder") will complete and sign all contracts, instruments, or other documents evidencing and containing the terms and conditions upon which such Bid was made.

F. [Intentionally Omitted]

G. Objections

Objections to the proposed sale and assignment of the Real Property Leases (including to proposed cure amounts and adequate assurance of future performance) will be set forth in writing and will specify with particularity the grounds for such objections or other statements of position and will be filed with the Court by January 24, 2011 at 5:00 p.m., prevailing Central time, and will be served so as to be received by that same date and time on (a) Lack's: Lack Properties, Inc., Attn: Melvin Lack, 200 South Ben Jordan, Victoria, Texas, 77901; (b) Lack's' counsel: Vinson & Elkins LLP, Attn: Paul E. Heath, 2001 Ross Avenue, Suite 3700, Dallas, Texas, 75201; (c) DJM Realty Services, LLC, Attn: Jim Avallone, 445 Broad Hollow Road, Suite 225, Melville, New York, 11747; (d) counsel for The CIT Group / Business Credit, Inc.: Patton Boggs LLP, Attn: Robert W. Jones, 2000 McKinney, Suite 1700, Dallas, Texas, 75201; and (e) counsel for the Official Committee of Unsecured Creditors: Platzer Swergold Karlin Levine Goldberg & Jaslow, LLP, Attn: Clifford Katz, 1065 Avenue of the Americas, 18th Floor, New York, New York, 10018.

H. Court Approval

A hearing to consider the sale and assignment of the Real Property Leases (the “Sale Hearing”) will be held before the Honorable Jeff Bohm, United States Bankruptcy Judge on January 26, 2011, at 1:30 p.m., prevailing Central time. The sale and assignment of the Real Property Leases will be subject to the entry of an order of the Bankruptcy Court approving the sale and assignment (the “Sale Order”).

I. Closing

The closing of the sale and assignment of the Real Property Leases will occur on the second business day after the Court enters the Sale Order. If the Court does not enter the Sale Order on or before January 31, 2011, the Assignment Agreement may be terminated.

J. Failure to Consummate Purchase and Back-Up Bid

If the Successful Bidder fails to consummate the purchase and assignment of the Real Property Leases, and such failure to consummate the purchase and assignment is the result of a breach by such Successful Bidder, the Debtors specifically reserve the right to seek all available damages from such defaulting Successful Bidder.

If the Successful Bidder fails to consummate the purchase and assignment of the Real Property Leases, the Qualified Bidder that had submitted the next highest or otherwise best Qualified Bid at the Auction (the “Back-Up Bidder”) will be deemed to be the Successful Bidder and the Debtors will be authorized to consummate the sale and assignment of the Real Property Leases with such Back-Up Bidder without further order of the Court and such Qualified Bid will thereupon be deemed the Successful Bid and such Qualified Bidder will be deemed the Successful Bidder. If any Back-Up Bidder fails to consummate the sale and assignment of the Real Property Leases because of a breach or failure to perform on the part of such Back-Up Bidder, the process described above may continue as determined by the Debtors until a Qualified Bidder will consummate the sale and assignment of the Real Property Leases.

K. [Intentionally Omitted]

L. Modifications

At any time prior to Court approval of the sale and assignment of the Real Property Leases, the Debtors may modify the Sale Procedures as they determine appropriate, including imposing such other terms and conditions upon parties submitting Bids as they determine to be in the best interests of the Debtors’ estates; provided that the Debtors must consult with the Committee and the Agent prior to making any material modifications to the Sale Procedures. Further, the Debtors will be authorized to package the Real Property Leases with other unexpired leases of non-residential real property in which Lack’s has an interest. In the event that multiple unexpired leases are packaged together, the Debtors will be afforded discretion in evaluating bids for all or a portion of the packaged unexpired leases.